

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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MEMORANDUM

February 12, 2018

To: Subcommittee on Oversight and Investigations, Democratic Members and Staff

Fr: Committee on Energy and Commerce Democratic Staff

Re: Hearing on “Examining the Impact of Health Care Consolidation”

On **Wednesday, February 14, 2018, at 10:15 a.m. in room 2322 of the Rayburn House Office Building**, the Subcommittee on Oversight and Investigations will hold a hearing entitled “Examining the Impact of Health Care Consolidation.”

I. RECENT CONSOLIDATION TRENDS

There are two basic types of consolidation in the health care industry: vertical and horizontal. Vertical consolidation occurs, for example, when physicians are hired, or group practices are acquired by a hospital.¹ Horizontal consolidation refers to the merger of either hospitals or insurers.²

A. Consolidation Among Insurers

Research has demonstrated a continuing trend in consolidation among health insurers. For example, the early 2000s saw “a wave of mergers and acquisitions” by insurers such as UnitedHealthcare, Anthem, and WellPoint.³ As a result of such consolidation, in 2003, a single insurer controlled one-third of the market in 38 states, including 16 states where the top insurer

¹ Government Accountability Office, *Increasing Hospital-Physician Consolidation Highlights Need for Payment Reform* (Dec. 2015) (GAO-16-189).

² Benjamin Gomes-Casseres, *The CVS-Aetna Merger Hinges on One Question: What Do Consumers Get Out of It?*, Harvard Business Review (Nov. 7, 2017).

³ James C. Robinson, *Consolidation and The Transformation Of Competition In Health Insurance*, Health Affairs (2004).

controlled more than half of the market.⁴ That consolidation has continued to accelerate: in most states, the top two insurers controlled more than half of the market in 2014, and the top four insurers controlled 83 percent of the market nationwide.⁵

In recent years, some large insurers have unsuccessfully attempted horizontal mergers. In July 2015, Aetna announced that it intended to acquire Humana for \$37 billion in cash and stock. The combined company would have been “the second-largest managed care company in the United States” with approximately \$115 billion in combined operating revenue and over 33 million enrollees.⁶ A similar merger was announced that same month, as Anthem agreed to purchase Cigna for \$48.4 billion. That deal proposed to combine the second- and fifth-largest insurers, reportedly resulting in \$115 billion in combined revenue and over 53 million enrollees.⁷

In July 2016, the Department of Justice sued to block both of these mergers, stating that the proposed mergers would “drastically constrict competition...”⁸ In January 2017, a federal judge blocked the Aetna-Humana merger, on the grounds that “the proposed merger [was] likely to substantially lessen competition” and cited “serious concerns” with the companies’ claims of increased efficiency under the merger.⁹ The next month, a federal judge also blocked the Anthem-Cigna merger, citing the “anticompetitive effects” and finding that “the merger is likely to slow innovation in the market.”¹⁰ On February 14, 2017, Aetna and Humana announced the termination of their agreement, and Cigna announced it was also terminating its agreement with Anthem.¹¹

B. Consolidation Among Providers

Consolidation has not been limited to insurers, as health care providers have also seen increases in these trends. The Government Accountability Office has found that vertical provider consolidations (i.e., hospital-physician consolidation) increased between 2007 and

⁴ *Id.*

⁵ Martin Gaynor, et al., *Making Health Care Markets work: Competition Policy for Health Care*, The Brookings Institution (April 2017).

⁶ *Aetna to Acquire Humana for \$37 Billion, Combined Entity to Drive Consumer-Focused, High-Value Health Care*, Business Wire (July 3, 2015).

⁷ *Anthem Agrees to Buy Cigna for \$48.4 billion*, Wall Street Journal (July 24, 2015).

⁸ Department of Justice, *Attorney General Loretta E. Lynch Delivers Remarks a Press Conference Announcing the Justice Department’s Actions to Block Aetna’s Acquisition of Humana and Anthem’s Acquisition of Cigna* (press release) (July 21, 2016).

⁹ *United States of America et al. v. Aetna Inc. et al*, 240 F. Supp. 3d 1, 74, 98 (D.D.C. Jan. 23, 2017).

¹⁰ *United States of America et al. v. Anthem Inc. et al*, 236 F. Supp. 3d 171, 216, 231 (D.D.C. Feb. 8, 2017), *aff’d* 855 F.3d 345 (D.C. Cir. Apr. 28, 2017).

¹¹ *Aetna-Humana & Anthem-Cigna: Two mergers die in one day*, CNN (Feb. 14, 2017).

2013.¹² More recently, these types of vertical consolidations have continued to increase. For example, the American Medical Association (AMA) reported that 2016 marked the first time that less than half of physicians owned their own practice, which demonstrated a continued long-term trend.¹³ Drawing on its survey of physicians nationwide, AMA reported that an equal percentage of physicians were either owners of their practice or employees (47.1 percent each). In 2016, approximately 33 percent of physicians either worked in a setting with at least some hospital ownership, or were direct hospital employees.¹⁴ Similarly, horizontal mergers have also increased among hospitals, with the number of hospital mergers doubling between 2005 and 2015.¹⁵

C. Emerging Developments

In December 2017, CVS Health announced that it would acquire the insurer Aetna, a vertical consolidation valued at \$77 billion.¹⁶ While it has been noted that the acquisition could disrupt the market by “more closely aligning management of drug benefits and other types of benefits in one organization,”¹⁷ others have expressed concern that the deal would not benefit consumers, as it may limit customers’ pharmacy options and result in low-quality care.¹⁸

In January 2018, Amazon, Berkshire Hathaway, and JPMorgan Chase announced that they would form a joint company to reduce the health care costs of their employees.¹⁹ Although the companies have not provided detailed plans, the venture would be non-profit and reportedly could reduce costs by negotiating directly with pharmaceutical manufacturers and providers.²⁰

II. WITNESSES

The following witnesses have been invited to testify:

¹² See note 1.

¹³ American Medical Association, *Policy Research Perspectives: Updated Data on Physician Practice Arrangements: Physician Ownership Drops Below 50 Percent* (2017).

¹⁴ *Id.*

¹⁵ Leemore Dafny and Thomas Lee, *Health Care Needs Real Competition*, Harvard Business Review (Dec. 2016).

¹⁶ CVS Health, *CVS Health to Acquire Aetna* (press release) (Dec. 3, 2017).

¹⁷ *Why the CVS-Aetna Merger Could Benefit Consumers*, New York Times (Dec. 3 2017).

¹⁸ *CVS and Aetna Say Merger Will Improve Your Health Care. Can They Deliver?*, New York Times (Dec. 4, 2017).

¹⁹ *Amazon, Berkshire, JPMorgan partner to cut U.S. healthcare costs*, Reuters (Jan. 30, 2018).

²⁰ *Id.*

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